

BINGHAM McCUTCHEN

Donn P. Pickett  
Direct Phone: 415.393.2082  
Direct Fax: (415) 393-2286  
donn.pickett@bingham.com

April 26, 2007

**Via E-Filing, Hand Delivery  
and U.S. Mail**

Bingham McCutchen LLP  
Suite 4400  
355 South Grand Avenue  
Los Angeles, CA  
90071-3106

213.680.6400  
213.680.6499 fax

bingham.com

The Honorable William Alsup  
United States District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Re: *Netflix, Inc. v. Blockbuster Inc.*; Case No. C-06-2361 WHA  
(JCS)**

Dear Judge Alsup:

I am writing to request a modification in the Court's Case Management Order in the above referenced case before the expert testimony designation deadline on Friday, April 27, 2007. Specifically, we are requesting modification of the Case Management Order to extend by one week (1) the last day for designation of expert testimony and opening expert reports; (2) the deadline for responsive expert testimony and reports; (3) the deadline for reply reports; and (4) expert discovery cutoff.

Both parties have been actively seeking discovery, including multiple depositions up to, and including this week. Under the Court's current Amended Docket Control Order, the deadline for expert reports is on the same day as the close of fact discovery. In addition, Bingham McCutchen has recently been brought in as additional counsel of record. Plaintiff and Counter-Defendant Netflix, Inc. is not certain that adding additional counsel, as opposed to substituting in new counsel, gives cause to modify the Case Management Order, but does not oppose the modification that Blockbuster seeks, so long as it would not require any other dates in the Court's Case Management Order to be modified.

Specifically, Blockbuster requests that the following deadlines be modified:

Description	Current Deadline	Proposed Deadline
Last day for designation of expert testimony and opening expert reports	April 27, 2007	May 4, 2007
Deadline for responsive expert testimony and reports	May 11, 2007	May 18, 2007

The Honorable William Alsup  
April 26, 2007  
Page 2

Deadline for reply reports	May 18, 2007	May 25, 2007
Expert discovery cutoff	June 1, 2007	June 8, 2007

Bingham McCutchen LLP  
bingham.com

The deadline extensions are not sought for delay, but to allow the parties ample time to properly prepare this case for trial. The newly added deadlines are to further facilitate the trial preparation process. Blockbuster is not seeking at this time to modify any other deadlines in the Court's Case Management Order. Therefore, the requested modifications are not expected to significantly impact the progress of this case.

Attached is Blockbuster's Notice of Motion and Motion requesting modification to the Court's Case Management Order.

Respectfully submitted,



Donn P. Pickett  
Attorneys for Defendant  
And Counterclaimant Blockbuster Inc.

Enclosure

cc: Daralyn J. Durie, Esq.  
Jeffrey R. Chanin, Esq.

1 ALSCHULER GROSSMAN  
Marshall B. Grossman - (SBN 35958)  
2 William J. O'Brien - (SBN 99526)  
Tony D. Chen - (SBN 176635)  
3 Dominique N. Thomas - (SBN 231464)  
The Water Garden  
4 1620 26th Street  
Fourth Floor, North Tower  
5 Santa Monica, CA 90404-4060  
Telephone: (310) 907-1000  
6 Facsimile: (310) 907-2000

7 BINGHAM McCUTCHEN LLP  
Donn P. Pickett (SBN 72257)  
8 Mary T. Huser (SBN 136051)  
Adrienne L. Taclas (SBN 166115)  
9 Three Embarcadero Center  
San Francisco, CA 94111-4067  
10 Telephone: (415) 393-2000  
11 Facsimile: (415) 393-2286  
Attorneys for Defendant and Counterclaimant,  
12 BLOCKBUSTER INC.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 NETFLIX, INC., a Delaware corporation,  
16 Plaintiff,

17 v.

18 BLOCKBUSTER, INC., a Delaware  
corporation, DOES 1-50,

19 Defendant.

20 AND RELATED COUNTERCLAIMS  
21

Case No. C 06 2361 WHA (JCS)

**BLOCKBUSTER, INC.'S NOTICE OF  
MOTION AND UNOPPOSED MOTION  
TO AMEND CASE MANAGEMENT  
ORDER RE EXPERT REPORTS AND  
DISCOVERY DEADLINES**

Complaint Filed: April 4, 2006

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on \_\_\_\_\_, 2007 at 9:00 a.m., or as soon thereafter as the matter can be heard, in Courtroom 9, 19th Floor, located at 450 Golden Gate Ave., San Francisco, California 94102, before the Honorable William Alsup, Defendant and Counterclaimant, Blockbuster Inc. ("Blockbuster"), by and through undersigned counsel, will and hereby does move this Court for an order amending the Court's Case Management Order.

Blockbuster respectfully moves the Court to modify its Case Management Order to extend by one week (1) the last day for designation of expert testimony and opening expert reports; (2) the deadline for responsive expert testimony and reports; (3) the deadline for reply reports; and (4) expert discovery cutoff. The parties have been actively seeking discovery, including multiple depositions up to, and including this week. Under the Court's current Amended Docket Control Order, the deadline for expert reports is on the same day as the close of fact discovery. In addition, Bingham McCutchen has recently been brought in as additional counsel of record. Plaintiff and Counter-Defendant Netflix, Inc. is not certain that adding additional counsel, as opposed to substituting in new counsel, gives cause to modify the Case Management Order, but does not oppose the modification that Blockbuster seeks, so long as it would not require any other dates in the Court's Case Management Order to be modified.

Specifically, Blockbuster requests that the following deadlines be modified:

Description	Current Deadline	Proposed Deadline
Last day for designation of expert testimony and opening expert reports	April 27, 2007	May 4, 2007
Deadline for responsive expert testimony and reports	May 11, 2007	May 18, 2007
Deadline for reply reports	May 18, 2007	May 25, 2007
Expert discovery cutoff	June 1, 2007	June 8, 2007


The deadline extensions are not sought for delay, but to allow the parties ample

1 time to properly prepare this case for trial. The newly added deadlines are to further facilitate the  
2 trial preparation process. Blockbuster is not seeking at this time to modify any other deadlines in  
3 the Court's Case Management Order. Therefore, the requested modifications are not expected to  
4 significantly impact the progress of this case.

5 For the foregoing reasons, Blockbuster requests that the Court modify its Case  
6 Management Order to extend the aforementioned discovery deadlines.

7  
8 Dated: April 26, 2007

ALSCHULER GROSSMAN LLP

9  
10 By:  (signature)  
11 William J. O'Brien  
12 Attorneys for Defendant and Counterclaimant,  
13 BLOCKBUSTER INC.

14 **IT SO ORDERED.**

15  
16  
17 Dated: \_\_\_\_\_

HONORABLE WILLIAM ALSUP  
UNITED STATES DISTRICT COURT JUDGE

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of Los Angeles, California at 355 South Grand Avenue, Suite 4400, Los Angeles, California 90071-3106. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

Today I served the attached:

**LETTER TO THE HONORABLE WILLIAM ALSUP  
DATED APRIL 26, 2007; and**

**Enclosure: BLOCKBUSTER, INC.'S NOTICE OF  
MOTION AND UNOPPOSED MOTION TO AMEND  
CASE MANAGEMENT ORDER RE EXPERT  
REPORTS AND DISCOVERY DEADLINES**

by causing a true and correct copy of the above to be placed in the United States Mail at Los Angeles, California in sealed envelope(s) with postage prepaid, addressed as follows:

Jeffrey R. Chanin  
Daralyn J. Durie  
KEKER & VAN NEST, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

*Attorneys for Plaintiff and  
Counterclaim Defendant,  
NETFLIX, INC.*

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on April 26, 2007.

  
Nichele M. Goitia